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**National Highways Limited**

NEC4 Professional Service Short Contract

June 2017 (with amendments January 2019)

Contract Data

in relation to a *service* for

Lower Thames Crossing (LTC) – Detailed Design of contestable assets owned and operated by Cadent Gas Ltd (Cadent)

June 2021

Contract Data

|  |  |
| --- | --- |
| **The *Client’s* Contract Data** | |
| Completion of the data in full, according to the Options chosen, is essential to create a complete contract. | |
| The *Client* is | |
| Name | National Highways Limited |
|  | |
| Address for communications | Bridge House,  1 Walnut Tree Close  Guildford  Surrey GU1 4LZ  Registered number 09346363 |
|  | |
| Address for electronic communications |  |
|  | |
| The *service* is | Detailed design services for Cadent contestable diversionary works as more particularly described in the Scope  The Scope is in Volume 2 |
|  | |
| The *starting date* is | seven days after the date the contract came in to existence |
|  | |
| The *completion date* is | 12 months after the *starting date* |
|  | |

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| --- | --- |
| The *threshold level* is 25 Quality Management Points. | |
|  | |
| The period after the *starting date* within which the *Consultant* is to submit a quality policy statement and quality plan is | four weeks |
|  |  |
| The *quality table* is | in Annex 10 to the Scope |

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| The *delay damages* are | | | £0.01 | | | | | | | per day |
|  | | | | | | | | | | |
| The *law of the contract* is | England, subject to the jurisdiction of the Courts of England | | | | | | | | | |
|  | | | | | | | | | | |
| The *period for reply* is | | | | | | | 2 weeks | | |  |
|  | | | | | | | | | | |
| The *defects date* is | | | 156 | | | | | | | weeks after Completion |
|  | | | | | | | | | | |
| The *assessment day* is the | | | last day of each calendar month | | | | | | |  |
|  | | | | | | | | | | |
| Work is not to be carried out on a time charge basis. | | | | | | | | | | |
|  | | | | | | | | | | |
| The United Kingdom Housing Grants, Construction and Regeneration Act (1996) does apply. | | | | | | | | | | |
|  | | | | | | | | | | |
| The *Adjudicator* is | | | | | | | | | | |
| Name | | | the person chosen by the Parties from the list of adjudicators published by the Institution of Civil Engineers | | | | | | | |
|  | | | | | | | | | | |
| Address for communications | | | As advised when the adjudicator is selected | | | | | | | |
|  | | | | | | | | | | |
| Address for electronic communications | | | As advised when the adjudicator is selected | | | | | | | |
|  | | | | | | | | | | |
| The interest rate on late payments is | | | 0.0722 | | | | | % per complete week of delay | | |
|  | | | | | | | | | | |
| The *Client* provides this insurance | | | | | N/A | | | | | |
|  | | | | | | | | | | |
| The *Consultant* provides the following insurance cover. See also the Scope Annex 3 for insurance details. | | | | | | | | | | |
| **INSURANCE AGAINST** | | | | **MINIMUM AMOUNT OF COVER** | | | | | **PERIOD FOLLOWING COMPLETION OR EARLIER TERMINATION** | |
| Liability of the *Consultant* for claims made against it arising out of the *Consultant’s* failure to use the skill and care normally used by professionals providing services similar to the *service* | | | |  | | | | | From the *starting date* until twelve (12) years following completion of the whole of the *service* or earlier termination. | |
| a limit of indemnity of not less than ten million pounds (£10,000,000) in respect of any one claim and in the aggregate per annum. | | | | |
| Loss of or damage to property and liability for bodily injury to or death of a person (not an employee of the *Consultant*) arising from or in connection with the *Consultant* Providing the Service | | | |  | | | | | from the *starting date* until all notified Defects have been corrected or earlier termination. | |
| a limit of indemnity of not less than five million pounds (£5,000,000) in respect of any one occurrence without limit to the number of occurrences in any annual policy period, but five million pounds (£5,000,000) any one occurrence and in the aggregate per annum in respect of liability arising out of products and pollution or contamination liability (to the extent insured by the relevant policy). | | | | |
| Liability for death of or bodily injury to employees of the *Consultant* arising out of and in the course of their employment in connection with the contract | | | |  | | | | | from the *starting date* until all notified Defects have been corrected or earlier termination. | |
| a limit of indemnity of not less than ten million pounds (£10,000,000) in respect of any one occurrence without limit to the number of occurrences in any annual policy period. | | | | |
|  | | | | | | | | | | |
| The *Consultant’s* total liability to the *Client* which arises under or in connection with the contract other than the excluded matters is limited to | | | | | | 150% of the total of the Prices | | | | |
|  | | | | | | | | | | |
| The *Adjudicator nominating body* is | | | | | | Institution of Civil Engineers | | | | |
|  | | | | | | | | | | |
| The *tribunal* is | | arbitration | | | | | | | | |
|  | | | | | | | | | | |
| The *arbitration procedure* is | | | | | | the Institution of Civil Engineers Arbitration Procedure current at the date of the notification that a Party intends to refer a disputed matter to the *tribunal*. | | | | |
|  | | | | | | | | | | |
| The *conditions of contract* are the NEC4 Professional Service Short Contract June 2017 (with amendments January 2019) and the *additional conditions of contract* clauses Z1 to Z13, Z15 to Z19, Z57, Z58, Z60 and Z134. | | | | | | | | | | |
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| **The *Consultant’s* Contract Data** | | | | | | | | | | | |
|  | | | | | | | | | | | |
| Completion of the data in full is essential to create a complete contract. | | | | | | | | | | | |
|  | | | | | | | | | | | |
| The *Consultant* is | | | | | | | | | | | |
| Name | | Capita Property and Infrastructure Ltd | | | | | | | | | |
|  | | | | | | | | | | | |
| Address for communications | | 65 Gresham Street, London, England, EC2V 7NQ | | | | | | | | | |
|  | | | | | | | | | | | |
| Address for electronic communications | |  | | | | | | | | | |
|  | | | | | | | | | | | |
|  | | | | | | | | | | | |
|  | | | | | | | | | | | |
| The *quality statement* is in | | | | the document called Quality Statement | | | | | | |
| The *Price List* is in | | | | The document called | | | | | | |
|  | | | | | | | | | | | |
| The *fee percentage* is | |  | | | | | % | | | | |
|  | | | | | | | | | | | |
| The *people rates* are | | | | | | | | | | | |
| category of person | | | | | | unit | | rate | | | |
|  | | | | | | | | | | | |
| If the work is to be carried out on a time change basis the *Consultant* includes *people rates* for its own people and people provided by a subcontractor | | | | | | | | | | | |
| The *key persons* are | | | | | | | | | | | |
| Name (1) |  | | | | | | | | | | |
|  | | | | | | | | | | | |
| Job |  | | | | | | | | | | |
|  | | | | | | | | | | | |
| Responsibilities |  | | | | | | | | | | |
|  | | | | | | | | | | | |
| Qualifications |  | | | | | | | | | | |
|  | | | | | | | | | | | |
| Experience |  | | | | | | | | | | |
|  | | | | | | | | | | | |
| Name (2) |  | | | | | | | | | | |
|  | | | | | | | | | | | |
| Job |  | | | | | | | | | | |
|  | | | | | | | | | | | |
| Responsibilities |  | | | | | | | | | | |
|  | | | | | | | | | | | |
| Qualifications |  | | | | | | | | | | |
|  | | | | | | | | | | | |
| Experience |  | | | | | | | | | | |
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| **Contract Data entry relating to Data Protection Legislation** | | | | | | | | | | | |
|  | | | | | | | | | | | |
| The contact details of the *Consultant’s* Data Protection Officer or Data Protection nominated lead are | | | | |  | | | | | | |
|  | | | | | | | | | | | |
| **Contract Data entries relating to Z Clauses** | | | | | | | | | | | |
|  | | | | | | | | | | | |
| **Z9 - Change of Control and financial distress** | | | | | | | | | | | |
|  | | | | | | | | | | | |
| The *credit ratings* at the Contract Date and rating agencies issuing them are | | | | | | | | | | | |
|  | | | | | | | | | | | |
| party | | |  | | | rating agency | | |  | *credit rating* | |
|  | | | | | | | | | | | |
| *Consultant* | | |  | | |  | | |  |  | |
|  | | | | | | | | | | | |
| Consortium Member | | |  | | |  | | |  |  | |
|  | | | | | | | | | | | |
| Guarantor | | |  | | |  | | |  |  | |
|  | | | | | | | | | | | |

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| **Z Clause Contents** | |
| **Number** | **Title** |
| Z1 | Changes to Core and Secondary Option clauses |
| Z2 | Interpretation |
| Z3 | Recovery of sums due from the *Consultant.* |
| Z4 | Assignment and transfer |
| Z5 | Confidentiality |
| Z6 | Adjudication |
| Z7 | Termination – Public Contract Regulations 2015 |
| Z8 | Subcontracting |
| Z9 | Change of Control and financial distress |
| Z10 | Joint ventures |
| Z11 | Parent Company Guarantee |
| Z12 | Discrimination, Bullying and Harassment |
| Z13 | Intellectual Property Rights (IPRs) |
| Z14 | Not Used. |
| Z15 | Tax Non – Compliance |
| Z16 | Value Added Tax Recovery |
| Z17 | Removal of *service* from the Scope |
| Z18 | Corruption or loss of data |
| Z19 | Conflict of Interest |
| Z20 – Z56 | Not Used. |
| Z57 | Infrastructure Act 2015 |
| Z58 | Revisions to the Quality Statement |
| Z59 | Not Used. |
| Z60 | Tax Arrangements of appointees |
| Z61-Z133 | Not Used. |
| Z134 | Information Modelling |

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| **Z1** | **Changes to core & Secondary Option clauses** | |
| 11  11.2 | Identified and defined terms  Add the following defined terms | |
|  |  | Alternative Guarantee is an alternative form of guarantee or security to a Parent Company Guarantee agreed by the *Client*. |
|  |  | Associated Company is any of   * a Consortium Member or * any company, corporation, partnership, joint venture or other entity which directly or indirectly Controls, is under the Control of or is under common Control with the *Consultant* or a Consortium Member. |
|  |  | Change of Control is an event where any single person, or group of persons acting in concert, acquires Control of the *Consultant* or a Consortium Member or acquires a direct or indirect interest in the relevant share capital of the *Consultant* or a Consortium Member, as a result of which that person or group of persons holds or controls the largest direct or indirect interest in (and in any event more than 25% of) the relevant share capital of the *Consultant* or a Consortium Member. |
|  |  | Consortium Member is an organisation which is a member of the group of economic operators comprising the *Consultant,* whether as a participant in a non-integrated joint venture or a shareholder in a joint venture company. |
|  |  | The Contract Date is the date when the contract came into existence. |
|  |  | Control has the meaning set out in section 1124 of the Corporation Tax Act 2010. |
|  |  | Controller is the single person (or group of persons acting in concert) that   * has Control of the *Consultant* or a Consortium Member or * holds or controls the largest direct or indirect interest in the relevant share capital of the *Consultant* or a Consortium Member. |
|  |  | Credit Rating is the *credit rating* or any revised long term *credit rating* issued by a rating agency accepted by the *Client* in respect of the *Consultant,* a Consortium Member or any Guarantor. Rating agencies accepted by the *Client* are Moody’s Investor Service Inc., Standard & Poor’s Financial Services LLC., Fitch Ratings Inc. unless agreed otherwise by the *Client*. |
|  |  | The Data Protection Legislation is   * the General Data Protection Regulation (EU 2016/679), * the Law Enforcement Directive (LED) (Directive EU 2016/680), * the Data Protection Act 2018 and * any other data protection laws applicable in England and Wales. |
|  |  | The Discrimination Acts are the Equality Act 2010 and any provisions of any earlier statutes that are expressly preserved in force by that Act. |
|  |  | Not Used. |
|  |  | DOTAS are the Disclosure of Tax Avoidance Schemes rules contained in Part 7 of the Finance Act 2004 and in secondary legislation made pursuant to it, as extended to National Insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 (SI 2012/1868). |
|  |  | Enforcement Action is enforcement action brought by a regulatory authority against the *Consultant* or an Associated Company under any health and safety or environmental legislation, including a successful prosecution or the issue of a prohibition or improvement notice under any contract. |
|  |  | EU Reference is any European Union   * regulation, * decision, * tertiary legislation or * provision of the European Economic Area agreement. |
|  |  | Exit Day is the exit day as defined in section 20 of the European Union (Withdrawal) Act 2018, as amended. |
|  |  | Financial Standing Test is the financial test for the *Consultant,* a Consortium Member or a proposed guarantor used in the tender stage of the competition for the contract. |
|  |  | General Anti-Abuse Rule is   * + the legislation in Part 5 of the Finance Act 2013 and   + any future legislation introduced to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions. |
|  |  | Guarantor is a person who gives a Parent Company Guarantee to the *Client*. |
|  |  | Halifax Abuse Principle is the principle explained in the CJEU case C-255/02 Halifax and others. |
|  |  | Incoming Consultant is any consultant appointed by the *Client* to Provide the Service or part of it (or a similar service or part of it) in place of the *Consultant*. |
|  |  | Indemnified Claim is a matter for which the *Consultant* is liable under the contract. |
|  |  | Information Systems are the systems specified in the Scope for the collection and storage of information regarding the *service* or any revised systems introduced by the *Client* from time to time. |
|  |  | Intellectual Property Rights or IPRs are copyright and related rights, database rights, design rights, patents, inventions, trade marks (and goodwill attaching to those trade marks), domain names, applications for and the right to apply for any of the foregoing, moral rights, confidential information and any other intellectual or industrial property rights, whether or not registered or capable of registration, whether subsisting now or in future in any part of the world |
|  |  | Licence is the document entitled “Highways England: Licence” dated April 2015 listed in **Annex 02** of the Scope |
|  |  | Named Suppliers are named *suppliers* and other Suppliers who have signed the Joining Deed. |
|  |  | Others are people or organisations who are not the *Client*, the *Adjudicator* or a member of the Dispute Avoidance Board, the *Consultant* or any employee, Subcontractor or supplier of the *Consultant* |
|  |  | Parent Company Guarantee is a guarantee of the *Consultant’s* performance in the form set out in the Scope. |
|  |  | Performance Requirement is the required standard for performance of each element of the *service* as specified in the Scope. |
|  |  | Personal Data are any data relating to an identified or identifiable individual that are within the scope of protection as “personal data” under the Data Protection Legislation. |
|  |  | Quality Management Points are points accrued by the *Consultant* in accordance with the *quality table* in **Annex 10** of the Scope. |
|  |  | Quality Statement is the *quality statement* unless later changed in accordance with the contract. |
|  |  | Related Dispute is a dispute under or in connection with a contract between a Party and Others relating to the contract |
|  |  | Related Dispute Adjudicator is an adjudicator appointed to determine a Related Dispute. |
|  |  | Relevant Tax Authority is HM Revenue & Customs or, if the *Consultant* is established in another jurisdiction, the tax authority in that jurisdiction. |
|  |  | RIDDOR Incident is an incident occurring under any contract between   * the *Consultant* or an Associated Company and * the *Client* or any other person   which results in death or serious injury to any worker or non-worker and for which the *Consultant* is responsible under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (or any replacement of it) or equivalent laws outside England applicable to such a contract. |
|  |  | The Secretary of State is the Secretary of State for Transport |
|  |  | Staff are persons employed or engaged by the *Consultant* or an Associated Company or any subcontractor at any stage of remoteness from the *Client* to Provide the Service at any time. |
|  |  | Tax Non-Compliance is where a tax return submitted by the *Consultant* or a Consortium Member to a Relevant Tax Authority on or after 1 October 2012   * is found on or after 1 April 2013 to be incorrect as a result of * a Relevant Tax Authority successfully challenging the *Consultant* or a Consortium Member under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rule or legislation with similar effect or * the failure of an avoidance scheme in which the *Consultant* or a Consortium Member was involved which was (or should have been) notified to a Relevant Tax Authority under the DOTAS or a similar regime or * gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax-related offences which is not spent at the date of award of the contract or to a civil penalty for fraud or evasion. |
|  |  | Threshold Level is the *threshold level* of Quality Management Points stated in the Scope. |
|  | Amend the following terms  **12        Interpretation and the law**  12.2     Delete & replace clause with  The contract is governed by the *law of the contract*.  In the contract, unless the context otherwise requires, any reference which immediately before Exit Day is a reference to (as it has effect from time to time)   * any EU References which are to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 and are read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time and * any European Union   + institution,   + authority or   + other such body   is read on and after Exit Day as a reference to the United Kingdom institution, authority or body to which its functions are transferred.  **51 Payment**  In clause 51.1 of the *conditions of contract*, delete “three weeks” and insert “14 days”.  **60 Compensation events**  In clause 60.1(1) at the end of the clause delete the full stop and insert  or   * a change to the Information Systems or the introduction of a new Information System, * a change to the method of or requirements for performance measurement or * a change which is stated elsewhere in these *conditions of contract* not to be a compensation event.   60.1 (3) Insert at the end (before the full stop)  “unless the instruction relates to a notification from the *Consultant* that a conflict of interest may exist or arise”  **92 Payment on Termination**  92.3 In the first sentence, delete “or if the *Client* terminates for Reason 8”. | |
|  | **84 Limitation of Liability** | |
| 84.1 | Delete clause 84.1 of the conditions of contract and replace it with  “The Consultant’s total liability to the Client for all matters arising under or in connection with the contract, other than the excluded matters, is limited to the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the law of the contract.”  The excluded matters are amounts payable by the Consultant as stated in the contract for   * loss of or damage to the Client’s property, * delay damages, * fraud or fraudulent misrepresentation, * infringement of an intellectual property right, * loss or damage   + to third party property or   + due to pollution, * loss arising from breach of   + confidentiality or data protection obligations or   + anti-bribery or anti-corruption obligations, * interest on debt, * losses caused by the Consultant’s illegal acts, deliberate default, deliberate abandonment, wilful misconduct or reckless misconduct, * death of or bodily injury to a person other than an employee of the Consultant and * other events for which the contract requires the Consultant to insure (but excluded only up to the required level for each type of insurance stated in the Contract Data). | |
| **Z2** | **Interpretation** | |
| Z2.1 | In the contract, except where the context shows otherwise   * references to a document include any revision made to it in accordance with the contract, * references to a statute or statutory instrument include any amendment or re-enactment of it from time to time and any subordinate legislation or code of practice made under it, * references to a British, European or International standard include any current relevant standard that replaces it, * references to persons or organisations include bodies corporate, unincorporated associations, partnerships and any other legal entity and * the words “includes” or “including” are construed without limitation. | |
| **Z3** | **Recovery of sums due from the *Consultant*.** | |
| Z3.1 | Where, under the contract a sum of money is recoverable from or payable by the *Consultant,* such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time after may become due to the *Consultant* under the contract or any other contract with the *Client.* | |
| **Z4** | **Assignment and transfer** | |
| Z4.1 | The *Consultant* does not assign, transfer or charge the benefit of the contract or any part of it or any benefit or interest under it without the prior agreement of the *Client.* | |
| Z4.2 | If the *Consultant* wishes to transfer the benefit and burden of the contract to a new consultant, it seeks the *Client’s* agreement to do so. The *Consultant*   * explains the reasons for the proposed transfer and * provides any further information requested by the *Client.*   If the *Client* (in its absolute discretion) agrees to the proposed transfer, the Parties and the new consultant execute a novation in the relevant form set out in the Scope or such other form as the *Client* may reasonably require. | |
| Z4.3 | If requested by the *Client*, the *Consultant* executes a novation agreement in the form specified in the Scope (or such other form as the *Client* may reasonably require) transferring the benefit and burden of the contract to   * a replacement organisation established to take over the *Client's* functions or part of it, * another public body exercising similar functions, * a Department or Office of Her Majesty's Government or * a local authority | |
| **Z5** | **Confidentiality** | |
| Z5.1 | The *Consultant* keeps (and ensures that anyone employed by it or acting on its behalf keeps) confidential and does not disclose to any person   * the terms of the contract and * any confidential or proprietary information (including Personal Data) provided to or acquired by the *Consultant* in the course of Providing the Service   except that the *Consultant* may disclose information   * to its legal or other professional advisers, * to anyone employed by it or acting on its behalf as needed to enable the *Consultant* to Provide the Service, * where required to do so by law or by any professional or regulatory obligation or by order of any court or governmental agency, provided that prior to disclosure the *Consultant* consults the *Client* and takes full account of the *Client’s* views about whether (and if so to what extent) the information should be disclosed, * which it receives from a third party who lawfully acquired it and who is under no obligation restricting its disclosure, * which is in the public domain at the time of disclosure other than due to the fault of *the Consultant* or * with the consent of the *Client* | |
| Z5.2 | The *Consultant* does not (and ensures that anyone employed by it or acting on its behalf does not) use any confidential or proprietary information provided to or acquired by it for any purpose other than to Provide the Service. | |
| **Z6** | **Adjudication** | |
| Z6.1 | The NEC4 Dispute Resolution Service Contract (June 2017) includes the following additional condition of contract  “Any information concerning the contract obtained by either the *Adjudicator* or any person advising or aiding the *Adjudicator* is confidential and is not used or disclosed by the *Adjudicator* or any such person except for the purposes of this Agreement. The *Adjudicator* complies and takes all reasonable steps to ensure that any persons advising or aiding the *Adjudicator* comply, with the Official Secrets Acts 1911 to 1989.” | |
| Z6.2 | If a dispute under the contract raises issues that are substantially the same as or connected with issues in a Related Dispute and the Related Dispute has been referred to adjudication, the dispute under the contract is referred to the Related Dispute Adjudicator and the Related Dispute Adjudicator becomes the *Adjudicator*. | |
| **Z7** | **Termination - Public Contract Regulations 2015** | |
| Z7.1 | The *Client* may terminate if one of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the *Consultant* at the Contract Date. | |
| Z7.2 | The *Client* may terminate the contract with immediate effect if the contract has been subject to substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Public Contracts Regulations 2015. | |
| Z7.3 | The procedure and amount due on termination are the same as for   * Reason 2 if the modification or infringement was due to a default by the *Consultant,* * Reason 5 if the modification or infringement was due to a default by the *Client* and * Reason 8 if the modification or infringement was due to any other reason. | |
| **Z8** | **Subcontracting** | |
| Z8.1 | The *Consultant* assesses the amount due to a subcontractor without taking into account the amount assessed under the contract. | |
| Z8.2 | If the *Consultant* subcontracts work to an Associated Company, the Defined Cost of the work subcontracted is assessed as if the work had not been subcontracted unless otherwise agreed by the *Client*. | |
| Z8.3 | The *Client* may, having stated the reasons, instruct the *Consultant* to remove a subcontractor. The *Consultant* then arranges the removal of the subcontractor and the appointment of a replacement in accordance with the contract. | |
| Z8.4 | Not Used. | |
| Z8.5 | Before   * appointing a proposed subcontractor or * allowing a subcontractor to appoint a proposed subsubcontractor   the *Consultant* submits to the *Client* for acceptance   * either * a Single Procurement Document (as described in regulation 59 of the Public Contracts Regulations 2015) in respect of the proposed subcontractor or subsubcontractor or * other means of proof that none of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applies to the proposed subcontractor or subsubcontractor and * details of any RIDDOR Incident under any contract for which the proposed subcontractor or subsubcontractor is responsible and of any Enforcement Action brought against the proposed subcontractor or subsubcontractor | |
| Z8.6 | The *Consultant* does not appoint the proposed subcontractor (or allow the subcontractor to appoint the proposed subsubcontractor) until the *Client* has accepted the submission. A reason for not accepting the submission is that   * it shows that there are grounds for excluding the proposed subcontractor or subsubcontractor under regulation 57 of the Public Contracts Regulations 2015 or * the *Client* is not satisfied that the proposed subcontractor or subsubcontractor has put in place adequate measures to ensure that the RIDDOR Incident or Enforcement Action will not occur. | |
| Z8.7 | If requested by the *Client*, the *Consultant* provides further information to support, update or clarify a submission under clause Z8.5. | |
| Z8.8 | If, following the acceptance of a submission under clause Z8.6, it is found that   * one of the grounds for excluding the subcontractor or subsubcontractor under regulation 57 of the Public Contracts Regulations 2015 applies or * the subcontractor or subsubcontractor has not put in place adequate measures to ensure that the RIDDOR Incident or Enforcement Action will not occur   the *Client* may instruct the *Consultant* to   * replace the subcontractor or * require the subcontractor to replace the subsubcontractor. | |
| Z8.9 | The *Consultant* submits the name of each proposed subcontractor to the *Client* for acceptance. A reason for not accepting the subcontractor is that its appointment will not allow the *Consultant* to Provide the Service. The *Consultant* does not appoint a proposed subcontractor until the *Client* has accepted the subcontractor. | |
| Z8.10 | The *Consultant* submits the proposed conditions of contract for each subcontract to the *Client* for acceptance unless the *Client* has agreed that no submission is required. | |
| Z8.11 | The *Consultant* does not appoint a subcontractor on the proposed subcontract conditions submitted until the *Client* has accepted them. A reason for not accepting them is that   * they will not allow the *Consultant* to Provide the Service or * they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation. | |
| **Z9** | **Change of Control and financial distress** | |
| Z9.1 | The *Consultant* notifies the *Client* immediately if a Change of Control has occurred. | |
| Z9.2 | If a Change of Control occurs without the *Client’s* prior consent or will not allow the *Consultant* to Provide the Service, the *Client* may terminate the *Consultant’s* obligation to Provide the Service with immediate effect. In the event of a termination under this clause, the termination procedures followed are clause 91.1 & 91.2 and the amounts due on termination are 92.1 | |
| Z9.3 | The *Consultant* notifies the *Client* immediately of any material change in   * the direct or indirect legal or beneficial ownership of any shareholding in the *Consultant* (or a Consortium Member). A change is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the *Consultant* (or a Consortium Member) or * the composition of the *Consultant* or a Consortium Member. A change is material if it directly or indirectly affects the performance of the contract by the *Consultant* or is considered substantial in accordance with Regulation 72(8)(e) of the Public Contracts Regulations 2015. | |
| Z9.4 | The *Consultant* notifies the *Client* immediatelyof any change or proposed change in the name or status of the *Consultant* or a Consortium Member. | |
| Z9.5 | The *Consultant* notifies the *Client* immediately if any of the following events occurs in relation to the *Consultant*, a Consortium Member or a Guarantor   * its Credit Rating falls below the relevant *credit rating*, * there is a further fall in its Credit Rating below the relevant *credit rating,* * it issues a profits warning to a stock exchange or makes any other public announcement about a material deterioration in its financial position or prospects, * it is subject to a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety, * it commits a material breach of its covenants to its lenders or * its financial position or prospects deteriorate to such an extent that, had it been part of the original assessment of Financial Standing Test the outcome of the Financial Standing Test would have been a failure[[1]](#footnote-2) or * any Parent Company Guarantee or any Alternative Guarantee becomes invalid or unenforceable for any reason. | |
| Z9.6 | If a Change of Control occurs and is likely to give rise to an actual or potential conflict of interest, the *Consultant* and the *Client* meet within one week to discuss the actions to be taken by either Party in order to overcome or mitigate the conflict. If the Parties do not agree and implement the actions needed to overcome or mitigate the conflict, the *Client* may terminate the *Consultant’s* obligation to Provide the Service with immediate effect. In the event of a termination under Z9.6, the termination procedures followed are clause 91.1 & 91.2 and the amounts due on termination are 92.1. | |
| Z9.7 | If a Change of Control occurs, the *Consultant* provides to the *Client*   * certified copies of the audited consolidated accounts of the Controller for the last three financial years, * a certified copy of the board minute of the Controller confirming that it will give to the *Client* a Parent Company Guarantee if so required by the *Client* and * any other information required by the *Client* in order to determine whether the Controller, had been included in the original Financial Standing Test, it would not have resulted the outcome of the Financial Standing Test being a failure and * any other information requested by the *Client* in order to satisfy itself that the *Consultant* remains in a position to perform its obligations under the contract. | |
| Z9.8 | If a Change of Control or any of the events listed in clauses Z9.3 to Z9.5 occurs, the *Client* may require the *Consultant* to give to the *Client* a Parent Company Guarantee from the Controller or (if the Controller had been part of the original Financial Standing Test the outcome of the Financial Standing Test would have been a failure) a Parent Company Guarantee or Alternative Guarantee (agreed by the *Client*) from an alternative guarantor proposed by the *Consultant* and accepted by the *Client.*  The *Consultant* provides the *Client* with the information listed in clause Z9.7 and the credit ratings for the proposed alternative guarantor (unless agreed otherwise by the *Client*) and any further information requested by the *Client* concerning the alternative guarantor and the form of any Alternative Guarantee. | |
| Z9.9 | If a Parent Company Guarantee is proposed to be given by an alternative guarantor, a reason for not accepting an alternative guarantor proposed by the *Consultant* is that   * had it been included in the original Financial Standing Test the outcome of the Financial Standing Test would have been a failure, * it does not provide the legal opinion required in clause Z9.14 or * it does not have a Credit Rating at least equal to the *credit rating* for the person to whom the event listed in clause Z9.5 has occurred. | |
| Z9.10 | If an Alternative Guarantee is proposed to be given by an alternative guarantor, a reason for not accepting an alternative guarantor (or an alternative a form of bond agreed by the *Client*) proposed by the *Consultant* is that it   * does not have a Credit Rating at least equal to   + long term credit rating of A or short term issues credit rating of A2 (Standard & Poor’s Financial Services LLC.),   + long term credit rating of Aa or short term rating of Prime-1 (Moody’s Investor Service Inc.) or   + long term credit rating of A or short term issues credit rating of F2 (Fitch Ratings Inc.)   unless agreed otherwise by the *Client,*   * does not have a commercial position which is strong enough to carry the Alternative Guarantee, * had been included in the original Financial Standing Test the outcome of the Financial Standing Test would have been a failure, * is not issued by a proposed alternative guarantor registered in England is not subject to the *law of the contract* and a legal opinion in accordance the contract is not received or * does not have appropriate financial regulation or have a standing of good repute in the United Kingdom’s financial market. | |
| Z9.11 | If so required by the *Client* the *Consultant* within four weeks after the *Client* notifies the requirement gives to the *Client*   * a Parent Company Guarantee from the Controller or * a Parent Company Guarantee or Alternative Guarantee from an alternative guarantor accepted by the *Client* for the *Consultant* or relevant Consortium Member the notification refers to and   such legal opinions required by the contract*.* | |
| Z9.12 | The *Client* may accept a   * Parent Company Guarantee from the Controller or * a Parent Company Guarantee or Alternative Guarantee from an alternative guarantor   proposed by the *Consultant* who does not meet the Financial Standing Test if the *Consultant* gives to the *Client* an assurance that the Controller or the alternative guarantor will meet the Financial Standing Test within eighteen (18) months of the *Client’s* acceptance. If so, the Parties agree a process for reviewing the financial standing of the Controller or the alternative guarantor during that period in order to demonstrate to the *Client* that it will meet the Financial Standing Test by the end of that period. | |
| Z9.13 | If   * + the *Consultant* fails to notify the *Client* that an event listed in clause Z9.5 has occurred,   + neither the Controller nor any alternative guarantor proposed by the *Consultant* complies with the Financial Standing Test within the timescale stated in clause Z9.11 or fails to provide the legal opinion required by clause Z9.14   + the *Consultant* does not give to the *Client* * a Parent Company Guarantee from the Controller or * a Parent Company Guarantee or Alternative Guarantee from an alternative guarantor accepted by the *Client*   within four weeks of a request from the *Client* to do so or   * the *Consultant* fails to demonstrate to the *Client* that the Controller or the alternative guarantor accepted by the *Client* if it had been included in the original Financial Standing Test the outcome of the Financial Standing Test would have been a pass within eighteen (18) months of the *Client’s* acceptance   the *Client* may treat such failure as a substantial failure by the *Consultant* to comply with its obligations. | |
| Z9.14 | If the *Consultant*, a Consortium Member, a Guarantor or an alternative guarantor proposed by the *Consultant* (in this clause referred to as a “relevant entity”) is not a company incorporated in and subject to the laws of England, the *Consultant* provides a legal opinion from a lawyer or law firm which is   * independent of the *Consultant*, Consortium Members, Guarantors or alternative guarantors, * qualified and registered to practise in the jurisdiction in which the relevant entity is incorporated and * accepted by the *Client.*   The legal opinion is addressed to the *Client* on a full reliance basis and the liability of the lawyer or law firm giving the opinion is not subject to any financial limitation unless otherwise agreed by the *Client.*  The legal opinion confirms that the method of execution of the Parent Company Guarantee or Alternative Guarantee is valid and binding under applicable local law and in particular covers the matters listed in the Scope. | |
| Z9.15 | If accepted by the *Client*, the alternative guarantor becomes the Guarantor for the *Consultant* or the relevant Consortium Member and the credit ratings become the credit rating for the Guarantor. | |
| Z9.16 | A failure to comply with this clause Z9 is treated as a substantial failure by the *Consultant* to comply with its obligations. | |
| **Z10** | **Joint ventures** | |
| Z10.1 | This clause applies if the *Consultant* is an unincorporated joint venture. | |
| Z10.2 | Each Consortium Member is jointly and severally liable to the *Client* for the performance of the *Consultant’s* obligations under the contract. | |
| Z10.3 | The *Consultant* nominates the representative named in the Contract Data for the purposes of the contract and for the giving and receiving of all notices, certificates, instructions and other communications under it. The *Consultant* acknowledges that receipt of a communication by the *Consultant’s* nominated representative constitutes receipt by all the Consortium Members. The *Consultant* notifies the *Client* in advance of any change to the identity of the *Consultant’s* nominated representative. | |
| Z10.4 | The *Consultant* acknowledges that any payment made by the *Client* to a Consortium Member under the contract to that extent discharges the *Client’s* liability to make payment to the *Consultant*. | |
| Z10.5 | A Consortium Member gives not less than four weeks’ notice to the *Client* of any proposed termination of the joint venture arrangement. | |
| Z10.6 | Termination of the joint venture arrangement for any reason is treated as a substantial failure by the *Consultant* to comply with its obligations. | |
| Z10.7 | Where two or more Consortium Members comprise the *Consultant,* clause 90.1 & 90.2 of the *conditions of contract* are amended by inserting after “the other Party” the words “or in the case of the *Consultant,* any Consortium Member". | |
| **Z11** | **Parent Company Guarantee** | |
| Z11.1 | If required by the *Client*, the *Consultant* gives to the *Client* a Parent Company Guarantee. If a Parent Company Guarantee was not given by the Contract Date, it is given to the *Client* within four weeks of the Contract Date or of the *Client‘s* request, whichever is later.  Parent Company Guarantees are given for   * a standalone company – from its Controller, or * a joint venture (whether incorporated or unincorporated) – from the Controller of each Consortium Member.   In all cases it is for the *Client* to decide whether it will accept a Parent Company Guarantee from a company other than the Controller. | |
| Z11.2 | A failure to comply with this condition is treated as a substantial failure by the *Consultant* to comply with its obligations. | |
| **Z12** | **Discrimination, Bullying and Harassment** | |
| Z12.1 | The *Consultant* indemnifies the *Client* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Client* arising out of or in connection with   * any investigation or proceedings under the Discrimination Acts or * an allegation of bullying or harassment   resulting from any act or omission of the *Consultant* in connection with the contract. | |
| **Z13** | **Intellectual Property Rights (IPRs)** | |
| Z13.1 | The *Client* owns (or will own) all IPRs in material prepared in connection with the contract, except as stated otherwise in the Scope.  To the extent that these IPRs do not automatically belong to the *Client,* the *Consultant* enters into such documents and does such acts as the *Client* requests to transfer the IPRs to the *Client* and procures that its subcontractors (at any stage of remoteness from the *Client*) do the same.  The *Consultant* provides to the *Client* the documents which transfer these IPRs to the *Client.* | |
| Z13.2 | The *Consultant* obtains perpetual, royalty-free, non-exclusive, assignable and irrevocable licences (capable of being sub-licensed to a third party, who shall also have the right to grant further sub-licences) of other IPRs for the *Client* as stated in the Scope.  Any licence granted under this clause survives the termination or expiry of the contract and cannot be terminated by the *Consultant* or its assignees or any third party.  The *Consultant* provides to the *Client* the documents which license these IPRs to the *Client.*  The *Consultant*’s or third party licensor’s exclusive remedies for any breach by the *Client,* or any sub-licensee, of any licence granted under this clause are damages and equitable relief. | |
| Z13.3 | The *Consultant* ensures that any subcontract (at any stage of remoteness from the *Client*) contains a right for the *Client* (enforceable in accordance with the Contracts (Rights of Third Parties) Act 1999) to enforce the obligations in this clause. | |
| **Z14** | **Not Used.** | |
| **Z15** | **Tax Non – Compliance** | |
| Z15.1 | The *Consultant* warrants that it has notified the *Client* of any Tax Non-Compliance or any litigation in which the *Consultant* (or a Consortium Member) is involved relating to any Tax Non-Compliance prior to the Contract Date. | |
| Z15.2 | The *Consultant* notifies the *Client* within one week of any Tax Non-Compliance occurring after the Contract Date and provides details of   * the steps the *Consultant* is taking to address the Tax Non-Compliance and to prevent a recurrence, * any mitigating factors that it considers relevant and * any other information requested by the *Client.* | |
| Z15.3 | The *Consultant* is treated as having substantially failed to comply with its obligations if   * + the warranty given by the *Consultant* under clause Z15.1 is untrue,   + the *Consultant* fails to notify the *Client* of a Tax Non-Compliance or the *Client* decides that any mitigating factors notified by the *Consultant* are unacceptable. | |
| **Z16** | **Value Added Tax (VAT) Recovery** | |
| Z16.1 | An amount due under the contract calculated by reference to a sum incurred by any person includes value added tax only to the extent that it is not recoverable as input tax by that person (or a member of the same tax group) by set-off or repayment. | |
| **Z17** | **Termination and removal of part or all of the *service*** | |
| Z17.1 | The *Client* may at any time instruct the *Consultant* that   * part or all of the *service* is to be permanently removed from the Scope or * for urgent reasons of health and safety, part of the *service* is to be temporarily removed from the Scope.   In either case the *Consultant* acknowledges that the *Client* may itself, or may appoint another supplier in place of the *Consultant* to provide services similar to the removed *service* (or part of it).  If all of the remaining *service* is omitted, the *Consultant* agrees that it is not entitled to any loss of profit or any other form of compensation including if the *Client* appoints another consultant to complete the *service* or any part of them. | |
| Z17.2 | An instruction given under clause Z17.1 is assessed as a compensation event, except that if the instruction is given for one of the reasons Reason 1 to 4, Reason 6 or Reason 7 the assessment includes a deduction of the forecast of the additional cost to the *Client* of completing the removed *service*. | |
| Z17.3 | If the *Consultant’s* obligation to Provide the Service is terminated for any reason, the *Consultant* if instructed by the *Client*   * completes the performance of any part of the *service* started prior to the date of termination and * co-operates with the *Client* or any Incoming Consultant to ensure a smooth transfer of functions. | |
| **Z18** | **Corruption or loss of data** | |
| Z18.1 | If any data of the *Client* is corrupted, lost, stolen or sufficiently degraded as a result of the *Consultant’s* default so as to be unusable, the *Consultant* immediately reports this to the *Client* and   * the *Client* may instruct the *Consultant* to restore the data in accordance with the *Client‘s* requirements( and any cost incurred by the *Consultant* in so doing is not Defined Cost)) or * the *Client* may itself restore the data (and the *Consultant* pays to the *Client* any reasonable expenses which the *Client* incurs in so doing). | |
| **Z19** | **Conflict of Interest** | |
| Z19.1 | Any steps in accordance with paragraph S 506.1 of the Scope is not a compensation event | |
| **Z20 - Z50 Not Used.** | | |
| **Z51** | **Not Used.** | |
| **Z52** | **Not Used.** | |
| **Z53** | **Not Used.** | |
| **Z54** | **Not Used.** | |
| **Z55** | **Not Used.** | |
| **Z56** | **Not Used.** | |
| **Z57** | **Infrastructure Act 2015** | |
| Z57.1 | The *Consultant* Provides the Service in compliance with and so as not to put the *Client* in breach of   * the Licence and * any other directions and guidance issued by The Secretary of State to the *Client* under section 6 of the Infrastructure Act 2015 (and notified by the *Client* to the *Consultant*). | |
| Z57.2 | The *Client* notifies the *Consultant* of any notice issued by the Office of Rail and Road to the *Client* under section 11(2)(a) of the Infrastructure Act 2015 that relates to the *service*. The *Consultant* complies with the terms of any such notice and indemnifies the *Client* against any associated fine imposed on the *Client* under section 11(2)(b) of that Act. | |
| **Z58** | **Revisions to the Quality Statement** | |
| Z58.1 | The *Consultant* may submit to the *Client* proposed revisions to the Quality Statement for acceptance within the *period for reply*. A reason for not accepting the proposed revision is that   * it will not enable the *Consultant* to meet a Performance Requirement, * it will unacceptably increase the risk of failure to meet a Performance Requirement, * it will constitute a substantial modification of the contract within the meaning of regulation 72 of the Public Contracts Regulations 2015, * it will not enable the *Consultant* to achieve the level of performance specified in the Quality Statement or * it will unacceptably increase the risk of failure to achieve the level of performance specified in the Quality Statement. | |
| Z58.2 | A revision to the Quality Statement accepted by the *Client* is not a compensation event. | |
| Z58.3 | The *Client* may instruct the *Consultant* to amend the Quality Statement where it is not compliant with the Scope provided by the *Client*. This instruction is not a compensation event. | |
| Z58.4 | A revision to the Quality Statement agreed by the *Client* in accordance with the Scope is not a compensation event. | |
| **Z59** | **Not Used.** | |
| **Z60** | **Tax Arrangements of the *Consultant*’s Staff** | |
| Z60.1 | Where any Staff are liable to be taxed in the United Kingdom in respect of consideration received under the contract, the *Consultant* complies and procures that the Staff comply, with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration. | |
| Z60.2 | Where any Staff are liable to National Insurance Contributions (NICs) in respect of consideration received under the contract, the *Consultant* complies and procures that the Staff comply, with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration. | |
| Z60.3 | The *Client* may, at any time during the term of the contract, request the *Consultant* to provide information to demonstrate either how any member of Staff is complying with clauses Z60.1 and Z60.2 or why those clauses do not apply to it. | |
| Z60.4 | If the *Consultant* fails to provide information in response to a request under clause Z60.3   * within the period for reply or * which adequately demonstrates either how any member of Staff is complying with clauses Z60.1 and Z60.2 or why those clauses do not apply to it   the *Client* may   * treat such failure as a substantial failure by the *Consultant* to comply with its obligations or * instruct the *Consultant* to replace the relevant member of Staff. | |
| Z60.5 | If the *Client* receives or identifies information through any means which demonstrates that a member of Staff is not complying with clauses Z60.1 and Z60.2, the *Client* may treat such non-compliance as a substantial failure by the *Consultant* to comply with its obligations. | |
| Z60.6 | The *Consultant* acknowledges that the *Client* may   * supply any information which it receives under clauses Z60.3 or Z60.5 or * advise the non-supply of information   to the Commissioners of Her Majesty’s Revenue & Customs and Revenue Scotland for the purpose of the collection and management of revenue for which they are responsible. | |
| **Z61 to Z133 Not Used.** | | |
| **Z134** | **Information Modelling** | |
| Z134.1 | The conditions from Option X10 from the NEC4 Professional Service Contract June 2017 (with amendments January 2019 and October 2020) apply. | |

1. Note to Tenderer: original assessment of Financial Standing are those undertaken as part of the SQ stage and as described in the SQ guidance. [↑](#footnote-ref-2)